Committee on Rules, submitted a privileged report (Rept. No. 108–352) on the resolution (H. Res. 434) waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.

## MOTION TO INSTRUCT CONFEREES ON H.R. 6, ENERGY POLICY ACT OF 2003

Mr. FILNER. Mr. Speaker, I offer a motion to instruct.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. FILNER moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 6 be instructed to reject section 12403 of the House bill, relating to the definition of oil and gas exploration and production in the Federal Water Pollution Control Act.

The SPEAKER pro tempore. Pursuant to clause 7, rule XXII, the gentleman from California (Mr. FILNER) and the gentleman from Texas (Mr. BARTON) each will control 30 minutes.

The Chair recognizes the gentleman from California (Mr. FILNER).

Mr. FILNER. Mr. Speaker, I yield myself such time as I may consume. I rise today to speak on this motion to instruct the conferees on the energy bill.

Mr. Speaker, sometimes the Republican Party is called the GOP. Well, I often wondered what that meant. It is clear from this energy bill that it means gas, oil and petroleum. And my motion would instruct the conferees to strike a section of H.R. 6 which represents a shameless payback to the oil and gas companies of this Nation.

This section, if my colleagues can believe it, Mr. Speaker, grants oil and gas companies a free pass from complying with the Clean Water Act, a free pass from complying with one of the major environmental laws that was passed in the 1970s. Under this section, oil and gas development and production sites, oil and gas development and production sites and construction sites do not have to worry about what their activities are doing to our water supply. No other industry in America gets this exemption; only the oil and gas development and production industry. And, they are under no obligation to control storm water runoff that would sully our beautiful lakes, rivers, and streams, and they suffer no consequences.

It must be nice for the oil and gas companies to have friends like that in Congress and in the White House, especially when these friends are members of the majority party, the GOP, gas, oil and petroleum, who, rather than dealing with the messy process we so often revere here and hold up as a model of democracy in the world, simply block out all those who would disagree with them. Heaven forbid anybody would bring up objections about the health of our water, not to mention the health of our people. The majority party, gas, oil and petroleum, has blocked out any dissenters right from the beginning on this bill.

One of my colleagues, the gentleman from Massachusetts (Mr. MARKEY), tried to introduce an amendment to strike this section, but he was ruled out of order and, get this, because the Committee on Energy and Commerce said it was not under their jurisdiction, but it was under the jurisdiction of the Committee on Transportation and Infrastructure, but that Committee on Transportation and Infrastructure never considered the bill. Talk about a Catch-22. And attempts to remove it on the floor of this House were thwarted by the Committee on Rules.

It is widely acknowledged that the majority did not allow the minority to participate, even in the conference committee, where the Senate and House meet to deal with their differences. So there was never a chance for honest debate of this section. This is what we call as a model for the world, a democracy.

So what do we have now, Mr. Speaker? A situation where oil and gas companies will be able to pollute our waters so that our children and grandchildren will not be able to use them. Our waters will be spoiled, our health will be threatened, but that is okay. We do not need clean water anyway, as long as we have our oil. And any suggestions that we invest more in renewable energies or in cleaner energies all were thrown out, and the handouts to the oil companies just keep getting bigger and bigger.

Right now, I encourage my colleagues to stop this insult to the environment and to the democratic process. We ought to vote ''yes'' on this motion to instruct and not to let the oil and gas companies pollute our waterways, and we should let the Nation know that we care about clean water.

Mr. Speaker, I reserve the balance of my time.

Mr. BARTON of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the motion to instruct filed by the gentleman from California (Mr. FILNER) seeks to remove section 12403 of H.R. 6, the pending energy bill in conference with our counterparts in the other body, the provision that passed the Committee on Energy and Commerce and the House as a whole. The motion to instruct would seek to have the House conferees reject the provision that the House has already adopted when we passed H.R. 6 on April 11 by a vote of 247 for the bill to 175 against the bill. That is approximately a 60 percent vote in support of the overall package.

Section 12403 in the context of the Federal Water Pollution Control Act, which we commonly refer to as the Clean Water Act, defines oil and gas exploration and production to mean ''all field operations necessary for both exploration and production of oil and gas, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such activities may be considered construction activities.''

□ 1745

Why do we need to have a definition in this energy bill? Section 402(1)(2) of the Clean Water Act specifically prohibits the administrator of the EPA from requiring a Federal stormwater discharge permit for discharges of stormwater runoff from, again, I quote directly from the act, ''oil and gas exploration, production, processing, or treatment operations or transmission facilities composed entirely of flows which are from conveyances or systems of conveyances, including, but not limited to, pipes, conduits, ditches, and channels, used for collecting and conveying precipitation runoff and which are not contaminated.'' This has been the law since 1987.

In plain language what it means is the EPA has no regulatory authority over waste water in the construction or the operation of a drilling rig in the United States. This has been the law since 1987. The statutory language seems clear that any matter of stormwater collection, whether it is a ditch, a culvert under a road, a diversion channel around an oil and gas well location, does not have to be permitted by the EPA. We could not be more clear. But the EPA has sought to regulate the building of the oil and gas location sites by insisting on National Pollutant Discharge Elimination System, NPDES, permits, commonly referred to as stormwater discharge permits for the construction of the site.

So even the EPA will admit that once it is built and in operation, they have no jurisdiction. So they are trying to do a back-door, an end-around and say you have to get a permit to construct the site. That simply is not the intent of the Congress. It was not the intent of the Congress 10, 15 years ago; and it is not the intent of this Congress. It is a direct contravention of the intent of Congress.

The requirement for a stormwater discharge permit is in direct opposition to Congress that the EPA attempts to separate the movement and placement of drilling equipment from oil and gas exploration and production operations. Applying common sense, which sometimes is in short supply, I understand, but if you apply common sense to the plain meaning of the statute, you would show that activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment are part and parcel of the operation. You cannot have one without the other. Therefore, a statutory exclusion for one totally encompasses the other as well.

The existing statute specifically precludes the requirement for stormwater

discharge permit if the runoff is not contaminated by coming into contact with, again I quote from the act, ''any overburden, raw material, intermediate products, finished product, by-product, or waste products located on the site of such operations.'' Yet the EPA seems willing to entertain those and argue that dirt, D-I-R-T, is a contaminant. The term ''overburden'' is used in association with mining operations, not oil and gas operations, and is defined in the code of the Federal regulations to exclude topsoil. The terms ''intermediate products, finished product, by-product, or waste products'' eliminate consideration of dirt from their definitions because their definition encompasses the results of a process. Dirt is not something that EPA regulates.

''Raw material'' is commonly defined as a crude or processed material that can be converted by manufacture, processing, or combination to a new and useful product. Raw material is not dirt. Therefore, pursuant to the express language in the statute, the building of an oil and gas well location which involves the movement of topsoil, or as we would say in Texas, dirt, is not subject to the requirements of stormwater discharge permit. We are talking about rain on dirt. This is not a man-made pollutant.

But even though the Clean Water Act is abundantly clear on this issue, EPA has chosen to ignore its express language, consequently the need for this definitional provision. Does this definitional provision affect the existing Clean Water Act? No. The provision merely defines oil and gas exploration and production. It does not change the substantive application of the Clean Water Act but merely provides a definition to provide clarity that should be readily apparent to any normally intelligent human being upon reading the statute.

The Clean Water Act requires a permit for contaminated runoff. This provision does not change that requirement. This provision does not allow contaminated stormwater runoff. In keeping with the existing law, which was enacted as a part of the Water Quality Control Act of 1987, this provision preserves the congressional intent to preclude the necessity of a permit for stormwater runoff that is not contaminated.

Congress never intended for EPA to require a permit for the runoff of uncontaminated water or rain over dirt. Vote against the motion to instruct. Let common sense prevail and preserve the House position.

Mr. Speaker, I reserve the balance of my time.

Mr. FILNER. Mr. Speaker, I would yield myself 2 minutes to respond to the gentleman from Texas (Mr. BARTON) who continues to throw dirt into this discussion.

It is true that the section of the Clean Water Act that the gentleman from Texas (Mr. BARTON) referred to provides that permits are not required where stormwater runoff is diverted around mining operations or oil and gas operations and does not come into contact with overburdened raw material product or processed wastes. This was in recognition of the fact that there are several situations in mining and oil and gas industries where stormwater is already channeled around plants and operations in a series of ditches in order to prevent such pollution of the stormwater. But this section does not include any stormwater runoff that has been contaminated by contact with overburdened raw material where ends meet products, et cetera. The soils that are disturbed in drilling wells are both overburdened and waste products.

There is no evidence anywhere, even in the industry comments, that suggest that stormwater is routed around these drilling and construction sites as it is in the operation sites. In fact, what I wanted to bring in the argument is there is no evidence, even from the oil and gas industries, even from the GOP, that the stormwater flowing through the construction sites are free of sediments or other pollutants. That is what makes them contaminated.

Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Mr. Speaker, I would like to thank the gentleman from California (Mr. FILNER) for offering this motion to instruct the energy bill conferees.

Rather than working on an energy bill that will work to solve our Nation's energy crisis, it appears that the Republicans are using this bill to wage a tax on our national resources, on our air, on our water.

The provision that was passed in the House without committee action would permanently exempt the oil and gas industry from the Clean Water Act's requirement to control stormwater runoff from construction activities at their exploration or production sites. Contaminated runoff would certainly impair the health of our Nation's streams, our lakes, our rivers, the waters, Mr. Speaker, where anglers fish, children swim. And we must not forget where our drinking water comes from.

Why are we rolling back the good progress that the Clean Water Act has made? Why are we doing this without a single hearing in the committee of jurisdiction and without the benefit of the EPA's years of work? It is time for the GOP gas/oil/petroleum group and their leadership to stop putting the interests of big oil and gas companies ahead, ahead of what is best for the American people.

Mr. Speaker, I urge my colleagues to vote in favor of the gentleman's motion to instruct.

Mr. BARTON of Texas. Mr. Speaker, I yield 3 minutes to the gentleman from Houston, Texas, (Mr. GREEN) a member of the committee of jurisdiction.

(Mr. GREEN of Texas asked and was given permission to revise and extend his remarks.)

Mr. GREEN of Texas. Mr. Speaker, under current law, oil and natural gas exploration and production activities do not have to do the extensive stormwater permitting that is required for large residential or commercial developments.

The provision in question in the energy bill clarifies what is current law. Oil and gas drill site activity is not the same as residential and commercial building construction and should not have to do the same permits.

It is unnecessary, and the loss to our domestic oil and natural gas supplies would be severe. This motion to instruct is trying to put a square peg in a round hole.

All the provision in the energy bill does is clarify that the definition of oil and natural gas exploration and production includes the preparation work for that exploration and production.

The provision in the energy bill does not roll back the Clean Water Act in any way. If a producer discharges reportable quantities of any hazardous substances in stormwater, they have to do stormwater permitting. If a producer's site discharges stormwater that contributes to a water quality violation, they have to do stormwater permitting. If there is a production site that I find out in my district that is actually polluting, then I will have them investigate it. That is under current law. And they should be.

The result of this policy, if we adopt this motion to instruct, is that we would have less domestic energy and higher natural gas prices. And with natural gas prices as high as they already are, the effects of this motion would now be very serious on the manufacturing jobs, not only in my own district that depend on affordable natural gas, but all over the country, whether it is in California or whether you are on the east coast.

We do not have a choice on where to get our natural gas. If it is by nature, it is by nature. We need to produce it where it is, and hopefully it will be more domestically. The opportunities for imports of natural gas from Mexico and Canada and overseas are limited. So we are going to have to depend on our own resources even more. It is going to be hard to do that. If we are going to have to depend on our own resources, it is going to be hard to do that with a bad regulatory policy.

The EPA, if they know that there is pollution already in an oil and gas site, they can go out. In California, that seems like where a lot of these motions to instruct come from; they can go out and investigate. If there is pollution, they can be cited. But do not make them go ahead and hinder what industrial production we are trying to do right now. That is all this does is restate what is current law, Mr. Speaker. That is why I urge my colleagues to vote against the Filner motion to instruct conferees.

Mr. FILNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from Texas (Mr. GREEN) continued to muddy the waters not only of this debate but of this Nation.

Let me quote from EPA's most recent national water quality inventory 2000 report which says siltation, siltation is one of the leading pollution problems in the Nation's rivers and streams. Siltation alters aquatic habitat, suffocates fish eggs and bottom dwelling organisms, and can interfere with drinking water treatment processes and recreational use of a river. Dirt, dirt, dirt. We are talking about pollution of our Nation's streams.

Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Mrs. CAPPS).

Mrs. CAPPS. Mr. Speaker, I rise in strong support of this motion to instruct conferees on the Energy Policy Act. This motion is about a subject about which the gentleman from California (Mr. FILNER), my colleagues, and the gentleman from Massachusetts (Mr. MARKEY) and I sent around in a Dear Colleague letter recently as part of my efforts on the energy subcommittee to alert Members of this body about the raft of terrible provisions in the energy bill conference report.

This particular provision undermines the Clean Water Act by giving oil and gas companies a permanent exemption from pollution control requirements at drilling sites. The Clean Water Act requires developers to obtain a stormwater permit from EPA to ensure that their construction practices do not lead to harmful runoff. In fact, if you go right outside the Capitol, especially on a rainy day like today, you will notice some of the measures these permits require for the visitors center construction site right here.

In this case, it is simple things like rocks and mesh over storm drains that keep out stormwater that could be polluted by construction activities.

□ 1800

Currently, the oil and gas industry enjoys a temporary moratorium on complying with these storm water permitting provisions. This moratorium is for construction sites of less than five acres. EPA is continuing to study the issue further, and the agency is expected to issue a final rule March 25.

Yes, the drafters of the energy bill cannot wait for EPA to determine an appropriate course of action. Instead, the energy bill shortcuts the process and gives the industry a permanent exemption for all construction activities for oil and gas exploration regardless of size. As a result of this exemption, oil and gas exploration would be the only construction activity not subject to Clean Water Act requirements. Oil and gas operations would be under no obligation to control pollution that would pollute our Nation's lakes, rivers and streams. This is an end-run around one of our Nation's most successful environmental laws. And, of course, no hearings have been held on this issue in the committee of jurisdiction, the Committee on Transportation and Infrastructure.

This amendment to the Clean Water Act is bad for public health, bad for environment, and certainly does not belong in the energy bill.

Finally, Mr. Speaker, I would like to take this opportunity to note how deeply disappointed I am in the conduct of the energy conference to date. To date there has been one official meeting of the conference, despite assurances by the leadership that it would be an open conference with full debate on the key issues. Instead, the bill is basically being drafted in secret with only occasional press reports about what is exactly in the bill. And from what we can tell, the bill will make major policy changes on a raft of issues. It will spend billions and billions of taxpayer dollars in subsidies to some of the richest industries on this planet; and all of this is being done basically in the dead of night.

It is very much like the way the appropriations process has been run and most of the rest of the major issues as well. This kind of closed, secretive process does not produce good policy. Quite frankly, it is scandalous. It is undemocratic.

For that and other reasons, I certainly do appreciate the gentleman from California's (Mr. FILNER) efforts on this motion. I urge all Members to support it and oppose any energy bill that contains such a shameful provision.

Mr. BARTON of Texas. Mr. Speaker, how much time remains on each side?

The SPEAKER pro tempore (Mr. HAYES). The gentleman from Texas (Mr. BARTON) has 20 minutes remaining. The gentleman from California (Mr. FILNER) has 17 minutes.

Mr. BARTON of Texas. Mr. Speaker, I yield 3 minutes to the gentleman from Oklahoma (Mr. SULLIVAN).

Mr. SULLIVAN. Mr. Speaker, I rise in opposition to the Filner motion to instruct conferees on H.R. 6, the energy bill.

If you ask any one of a thousand people employed by the oil and gas industry in my district, the question, How do you physically get oil and gas? They will all answer the same way. The first step is exploration and production to prepare a site for drilling. Like a surgeon sanitizing a patient before an operation, an exploration site must be prepared before drilling can begin. Cleaning, grading and excavating have always been an inherent part of oil and gas activities.

Congress has exempted oil and gas deficits from the storm water permit process and there is good reason to do so. Oil and gas exploration occurs in predominantly rural areas and remote locations. Oil and gas site preparation uses temporary, nonimpervious, low-impact techniques. These techniques have inherently lower environmental impacts compared to conventional commercial and residential construction in urban settings.

If these activities are nonexempt, oil and gas leases will be lost to time delay. If oil and gas leases are lost, development of on-shore domestic and oil gas reserves will be lost.

Mr. Speaker, I do not have to tell that you we depend far too much on foreign oil. We import more than half of our oil from foreign sources, a number that is expected to grow to 66 percent by the year 2010 if we do not act now.

I urge my colleagues to support domestic production and vote no on the Filner motion to instruct.

Mr. FILNER. Mr. Speaker, I yield 3 minutes to the gentleman from Arizona (Mr. GRIJALVA).

(Mr. GRIJALVA asked and was given permission to revise and extend his remarks.)

Mr. GRIJALVA. Mr. Speaker, I rise today to speak in support of the Filner motion to instruct.

The issue of proper regulation of oil and gas companies with regard to clean water is a very real and serious concern for the people of Southern Arizona that I represent.

On July 30 of this year, as an example, an 8-inch high pressure gasoline pipeline operated by Kinder Morgan, Incorporated on the west side of Tucson, Arizona, ruptured. Ten thousand gallons of gasoline were sprayed 50 feet in the air dousing five homes under construction, which later had to be demolished. Hazardous fumes were created 250 yards away from occupied homes.

In the aftermath, there were reports of ground water contamination resulting from the rupture and possibly from the reconstruction efforts. Initial reports varied, some indicating serious contamination. More recent reports seem to show contamination may have been ongoing for some time and only came to light due to the investigation of the rupture.

Safety inspection reports dating back to 1995, and as far back as 1988, indicated potential problems for a rupture, but yet this information was never made available to the public or to their elected officials.

To address this problem, I have asked the EPA to conduct an independent assessment of the degree of contamination and the risks for residents. If the Filner motion is not passed, this type of oversight and enforcement would be seriously compromised. The people in my district have a terrible wealth of experience with ground water contamination. A plume of TCE created the most serious of many Superfund sites in my district. This pollution has created a legacy of illness and death across the south and west sides of Tucson. I am told it continues to grow every day.

The gas and oil industries facilities covered by this exemption tend to be

located in lower-income, minority and poor neighborhoods. Companies, of course, seek to limit their legal liabilities by placing these facilities near populations without the money to litigate or the strong political representation. Then the companies come back to us and ask for more legal protection, as they have in this amendment, and for our complicity in this injustice.

The bill before us would expand an exemption that should never have been passed in the first place. It is absurd that we would be debating whether to increase pollution by giving legal immunity to corporate polluters. How can a Member of Congress seriously argue that we should allow more pollution in our ground water, rivers and streams?

The issue is clear: Do we want to maintain our standards of clean water or do we want to expand existing loopholes that allow even greater environmental injustices to occur with our complicity?

I urge my colleagues to protect human health, protect our children, and our precious and increasingly fragile natural legacy by voting yes on the Filner motion to instruct.

HOUSE OF REPRESENTATIVES,
*Washington, DC, October 24, 2003.*

Hon. MARIANNE HORINKO,
*Acting Administrator, U.S. Environmental Protection Agency, Pennsylvania Avenue, NW., Washington, DC.*

WAYNE NASTRI,
*Regional Administrator, Hawthorne Street, U.S. Environmental Protection Agency, Region 9, San Francisco, CA.*

DEAR MS. HORINKO AND MR. NASTRI: I am writing regarding the recent gasoline pipeline rupture in Tucson, Arizona. This disaster is of extremely grave concern to me and to the constituents I represent in Arizona.

On July 30, the pipeline, owned and operated by Kinder Morgan, Inc., ruptured, spraying 10,000 gallons of gasoline onto homes in Tucson. This event subjected my constituents to serious environmental, health and safety risks. Thankfully, no one was injured in the rupture. Now that the immediate danger of the rupture has passed, however, residents are enduring the impacts of the pipeline's reconstruction and potential realignment.

Neither the public nor elected officials knew the extent of the safety risks associated with the pipeline. Our preliminary information indicates that the pipeline may have failed safety inspections from 1995 on; however, this information was not made public, nor made available to elected officials or emergency personnel. This information is very disturbing in light of the extreme risks involved with the transportation of highly flammable materials.

In the aftermath of the rupture, there have been reports of groundwater contamination as a result of the pipeline rupture and/or reconstruction efforts. Reports on the issue have varied: some indicating a dangerous contamination, and some not. In light of this discrepancy, and a great deal of anxiety on the part of residents of Tucson, I request that you immediately commence an independent assessment of the situation in order to ensure that the citizens of Tucson and southern Arizona are safe from any unnecessary risks of the rupture itself and impending reconstruction.

It is absolutely crucial that citizens of Southern Arizona know the full extent of the danger and risks associated with this rupture and reconstruction efforts. It is the EPA's responsibility to ensure that our citizens are protected from environmental contamination. Please inform my staff member, Rachel Kondor, at (202) 225–2435, as to the steps you plan to take with regard to this issue.

Sincerely,

RAÚL M. GRIJALVA,
*Member of Congress.*

Mr. BARTON of Texas. Mr. Speaker, I yield 3 minutes to the gentleman from Lubbock, Texas (Mr. NEUGEBAUER).

Mr. NEUGEBAUER. Mr. Speaker, I rise in opposition to the Filner motion to instruct conferees.

First and foremost, Mr. Speaker, the House Energy Policy Act does not exempt oil and gas exploration and production sites from environmental regulation. Any claim that it does is simply untrue. Rather, the provision in the legislation clarifies under what conditions EPA should regulate these facilities. This provision simply clears up Congress's original intentions with regard to storm water permitting under the 1987 Clean Water Act's amendments. It should be included in this conference report.

Noncontaminated storm water from oil and gas exploration and production sites was specifically excluded from the new storm water permitting requirements for sites in 1987. However, EPA did not interpret the law that way. EPA decided to subject uncontaminated runoff from these sites to rules designated to regulate runoff from major construction sites, such as shopping centers and subdivisions.

Mr. Speaker, before coming to Congress, I was a land developer. I have moved a lot of dirt in my life. I have prepared a lot of sites to build homes for Americans; and there is a lot of difference between preparing a site for drilling and preparing a site for homes.

Additionally, the cost of making these kinds of nonsense pollution requirements for sites that should not be under this regulation only adds to the cost of housing and it only adds to the cost of oil and gas exploration in our country, at a time where we are a net importer, Mr. Speaker, of substantial amount of our petroleum products.

Oil and gas exploration production sites are not major construction sites and should not be permitted in the same manner. That was Congress's original intention, and we need to restore the intent in the conference report.

While EPA has suspended permitting for these sites in order to reevaluate the regulations, we need this provision to clear up the issue and end the lawsuits and move forward once and for all.

If there is contaminated runoff at these sites, it will be subject to EPA permitting. Oil and gas producers continue to manage storm water when they build on exploration sites in order to prevent contaminated runoff. Exploration sites need to be stabilized quickly in order for development equipment can be brought on to the sites quickly.

Timing is crucial with these projects and unnecessary regulation slows and discourages new development of energy resources we need. Disruption of energy supply development is detrimental to a sound national energy policy. Oppose the Filner motion to instruct.

Mr. Speaker, this is needless regulation that we need to start curbing in our country, and I urge Members to be oppose the Filner motion to instruct.

Mr. FILNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I keep hearing the gentleman from Texas saying that we should not disturb the development of oil and gas, and surely we must find sources of energy in this Nation.

What about alternative sources? And why does everyone other industry in America have to comply with this section of the Clean Water Act and not gas and oil if this motion does not pass.

Mr. Speaker, I yield such time as he may consume to the gentleman from Oregon (Mr. BLUMENAUER).

(Mr. BLUMENAUER asked and was given permission to revise and extend his remarks.)

Mr. BLUMENAUER. Mr. Speaker, I appreciate the gentleman's courtesy in permitting me to speak on his important motion to instruct.

My friends who are so concerned about the energy industry, I fear are giving us conflicting signals. On the one hand, we are told that we can open up areas to additional drilling and exploitation because it is so safe, because it can be done without environmental damage. They are willing to go into the pristine arctic wilderness area and subject it to drilling.

Yet, we are told here that, no, we actually have to extend further protections, further exemptions from full compliance with our Nation's environmental laws. I find it a little ironic.

It is sad that we are debating what may be in the energy bill because the irony is, of course, that the committee members who are on our side of the aisle have been excluded. They do not really know exactly what is in the conference committee report, let alone the public and the rest of America. But the fact is that we are very likely to be dealing with this exemption.

I have heard references again that I find ironic to the committee of jurisdiction. The gentleman will remember that when the gentleman from Massachusetts (Mr. MARKEY) attempted in the Committee on Energy and Commerce to provide an amendment to deal with this specific subject, he was ruled out of order because the committee of jurisdiction happens to be our Committee on Transportation and Infrastructure, but we have not been dealing with this. This is dropped in in this hidden conference process from which the Democrats have been excluded.

When there was an effort to go to the Committee on Rules earlier to explicitly deal with this matter when the energy bill was coming forward, the Committee on Rules would not allow it.

The gentleman from Texas refers dismissively to ''dirt'' as though it is not a pollutant. Well, I ask the gentleman to come to the Pacific Northwest and talk to sportspeople who will tell you that inappropriate regulation of dirt, of silt is a serious pollution problem. And that is why responsible contractors deal with it and, in fact, that is why we have had it under Federal statute and why it is being employed right here within sight of the Capitol. Dirt, silt is a serious problem.

Now, this regulation has been under control since 1992. In fact, the EPA has been looking to extend it because this is serious business, not just the sites that are over five acres, but from one to five acres. Again we have been operating under this rule for 10 years.

Now, I am sorry my colleague from Houston got away because I have the provisions here of Section 402, and it appears that it would not permit the administrator to do what he was saying, to clean up pollution after the fact.

The point is we should not be cleaning up after the fact. There is no good reason to roll back this protection. There is no good reason for the Committee on Energy and Commerce to act outside their jurisdiction and deny the opportunity for the Committee on Transportation and Infrastructure to deal with it.

Last, I find it ironic that this comes forward on a day when two more environmental rollbacks have been brought forward by this administration. There is a leak that they are going to cut back clean water jurisdiction over streams that do not have a ground water source, and today the administration announced that it would not be pursuing any of the pending new source review cases against utilities that went ahead with construction in violation of the new source review program.

□ 1815

This despite their repeated assurances when they were coming forward with the NSR rule change that they would not affect pending cases.

Mr. Speaker, this is a part of a pattern of environmental rollback that we have seen with this administration that will not correlate its campaign rhetoric with what it does in office and where this Congress is complacent in stepping back from our requirement to protect the environment.

I strongly, strongly urge that we approve the motion to instruct from the gentleman from California.

Mr. BARTON of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Oklahoma (Mr. CARSON), a member of the Committee on Transportation and Infrastructure.

(Mr. CARSON of Oklahoma asked and was given permission to revise and extend his remarks.)

Mr. CARSON of Oklahoma. Mr. Speaker, I rise tonight in opposition to my good friend the gentleman from California's (Mr. FILNER) motion to instruct conferees on the Energy Policy Act of 2003. This motion will instruct conferees to drop a critical provision of domestic oil and natural gas production which would negatively impact this very important industry in my home State of Oklahoma and throughout the country.

The provision in the Energy Policy Act simply clarifies current confusion in the Clean Water Act that has led the Environmental Protection Agency to believe it should regulate storm water discharges resulting from the construction of exploration and production facilities under a different standard than operating facilities. This was never the intent of Congress.

The Energy Policy Act would clarify that one permitting standard would apply to both construction and operation of exploration and production facilities. This provides for sound, consistent and cost-effective regulations designed for the conditions associated with oil and natural gas facilities to be developed.

I respectfully request that my colleagues join me in opposing the Filner motion to instruct. I appreciate the granting of the time.

Mr. FILNER. Mr. Speaker, I yield myself such time as I may consume.

I would tell the Rhodes scholar from Oklahoma that he needs some additional training in research. Staff that was here when the bill was written know the intent of Congress, and it is not as the gentleman described.

Let me respond to several of the arguments from the other side. If the provisions stays in the energy bill, it is a rollback of existing requirements for construction over five acres. That is what exists now, and this rolls it back, no matter what they say that this intended 10 years ago or whatever.

Our original intent in 1987 was to exempt storm water that was totally unpolluted. Storm water that was totally unpolluted was exempted. Storm water from construction is polluted, as we have heard from the gentleman from Oregon, and the gentleman from Texas knows that when there is no possibility of runoff into the waters of the United States one does not need a permit. Where all the storm water is kept on site, go do it; they do not need the permit.

So we are I think hearing justifications. We are hearing rationalizations of the destruction of our environment.

Mr. Speaker, other industries do not have this exemption from the Clean Water Act. In fact, many other companies, including mom and pop businesses with far fewer resources than the oil and gas industry that the Republican party tries to protect, every one of those businesses must take steps to reduce polluted storm water runoff from their construction activities. So why not oil and gas companies? Could it be because they spend every election cycle millions of dollars on campaign contributions?

These companies I think are getting a payback here in the form of special interest loopholes in the Clean Water Act that was stuck into the energy bill. In the last few years, they have given over $64 million to Federal candidates and their parties. It is a great payback that we have here in the energy bill for those contributions.

Mr. Speaker, environmental groups all across the Nation support this instruction: The Audubon Society, the American Rivers, the Center for International Environmental Law, Clean Ocean Action, Clean Water Action, Coastal Alliance, Defenders of Wildlife, Earthjustice, Environmental Integrity Project, Friends of the Earth, the Gulf Restoration Network, the League of Conservation Voters, the National Environmental Trust, the National Resources Defense Council, the Save the Dunes Council, the Sierra Club, The Ocean Conservancy, The Wilderness Society, the Union of Concerned Scientists and the U.S. Public Interest Research Group. The National League of Cities supports my instruction, and not only these environmental groups support the motion but hunting and fishing groups in America do, Trout Unlimited, the Izaak Walton League and the National Wildlife Federation.

It is clear that an exemption is being carved out to allow one business, one sector of our economy, one extremely powerful sector of our economy to buy its way out of the Clean Water Act. I think that is a terrible terrible thing to say to our Nation, that if one gives the campaign contributions they get exempted from the environmental protection that is required of everyone else.

Mr. Speaker, I would urge us to adopt this motion to instruct.

Mr. Speaker, I reserve the balance of my time.

Mr. BARTON of Texas. Can I inquire of the gentleman, who is the author of the amendment, if he has any other speakers?

Mr. FILNER. I have someone to counter whatever the gentleman says.

Mr. BARTON of Texas. The reason I ask is, the gentleman has the right to close. So after I speak is the gentleman going to give the closing statement? Is that the gentleman's intention at this point in time?

Mr. FILNER. Yes.

Mr. BARTON of Texas. Okay. Mr. Speaker, how much time do I still have?

The SPEAKER pro tempore (Mr. HAYES). The gentleman from Texas (Mr. BARTON) has 12 minutes remaining, and the gentleman from California (Mr. FILNER) has 3½ minutes remaining.

Mr. BARTON of Texas. Mr. Speaker, I yield myself such time as I may consume, and at the end of my statement I am going to ask my good friend from Abilene to answer a few questions since

I know he has got a number of these drilling sites in his District.

I want to start out by saying we have no opposition if a State or a local government, for whatever reason, wishes to put some regulations in place to prevent siltation into their waterways, but the Clean Water Act is explicit that we do not regulate drilling sites, oil and gas drilling sites, under the Clean Water Act. It is explicit in the Act. What EPA has tried to do is say, that is true, but we should be able to regulate the site construction, the site preparation of these drilling sites.

Now, use a little common sense. What is the worst thing that is going to happen while one is preparing a site to be used as a drilling site for oil and gas exploration? It might rain. It might rain. I do not know how long it takes to prepare a drilling site. My good friend from Abilene may know. It may take a week. It may take 2 weeks. It may take a couple of days, but if it takes 6 months to get the permit to prepare the site, and a person has to spend $10- or $15,000 to get the permit and then to put up the berms and all that stuff and it does not rain, they have done a lot of work for nothing, and maybe if one is a small, independent drilling operator like there are a lot of in my District, trying to operate out of the old Corsicana field or Mexia field, they may say to heck with it, I am not going to even try.

The average well in Texas produces less than 10 barrels of oil a day right now. How many little guys do we want to make it so impossible to do anything to extend the life of our existing fields on the off chance that while they are preparing the site to drill it might rain? The Clean Water Act does not regulate dirt as a pollutant. It is not a regulated pollutant.

So all that we are saying in the bill that has already passed the House is the law already is explicit that the EPA cannot regulate an active drilling site. We say they cannot go in and in a back door way try to regulate the site preparation, and again, we are talking about storm water, rainwater, runoff which if one is preparing a drilling site, the worst that is going to happen is it might rain and they might get a little mud. That is the worst that is going to happen.

Mr. FILNER. Mr. Speaker, will the gentleman yield?

Mr. BARTON of Texas. I yield to the gentleman from California.

Mr. FILNER. Mr. Speaker, the gentleman said, if I heard him right, that he might be going over previously active fields, right, construction that were, am I to understand, active fields?

Mr. BARTON of Texas. In my District, we are going into old fields and trying to extend the life of those fields, and on occasion, believe it or not, they do scrape up $10- or $15-, $50,000, get a lease, go out and actually try to drill a new well. It does happen, not as often as it should, in my opinion, but it does happen.

Mr. FILNER. Mr. Speaker, if the gentleman would continue to yield, would there not be the possibility in active sites or previously at the sites benzene, toluene, other heavy metals? There would not be just dirt there?

Mr. BARTON of Texas. If one goes to drill in an existing site, under State regulation, in my case the State of Texas, requires site remediation, site monitoring, and again, we are talking about storm water runoff. If there is contamination, we do not change that. We do not change that at all.

All we are simply saying is heaven help the poor guy or girl in our society that wants to go out and try to find some more oil and gas and they actually put up their own money, go to the bank, borrow it, whatever. Let us do not require them to get a waste water runoff permit from the Federal EPA that explicitly says in the current law one does not have to have once the site is active.

I want to ask my good friend from Abilene a few questions if he would care to engage me in a colloquy or dialogue. I would assume that the gentleman has some oil and gas production in his District in West Texas. Is that correct?

Mr. STENHOLM. Mr. Speaker, will the gentleman yield?

Mr. BARTON of Texas. I yield to the gentleman from Texas.

Mr. STENHOLM. That is correct.

Mr. BARTON of Texas. Has the gentleman ever been in a conversation with an oil and gas producer at some cafe or maybe a church or at a social and they actually talked about maybe going out and trying to drill a few new wells?

Mr. STENHOLM. Mr. Speaker, I have done better than that. I have had them drill on my own property. They drilled 11 dry holes which I have had discussions with them as to why they could not do a better job of finding oil under my property than just drilling dry holes.

But from the standpoint of the basic in the gentleman's exchange with the gentleman from California (Mr. FILNER), we used to have a very bad situation in Texas, and I can show my colleagues land in my community that was literally destroyed by the oil and gas industry because of their inability and unwillingness to protect it. That was 50 years ago.

Today, when the last well that was drilled on my property, again a dry hole, one cannot tell they were there today. They do an excellent job because that is the rules and regulations that Texas imposes upon the oil and gas industry, and I believe that is basically true all over the United States today.

The question before us, though, it is not just oil and gas producers that are opposed to these proposed storm water regulations being imposed unilaterally across the board on every possible site. It is also my small towns and communities have got real problems with this, home developers, et cetera, because in dry West Texas, we can impose some of these regulations based on the possibility of rain and spend more money than one can possibly get out of the investment that they are going in. So it would have a very damaging effect on economic development.

□ 1830

Mr. BARTON of Texas. Mr. Speaker, I ask the gentleman from Texas, on the dry holes drilled on the gentleman's property, how long did it take them to prepare the site for drilling?

Mr. STENHOLM. A couple of days. They would go in and dig the slush pit. The next thing, the drill rigs are there.

Mr. BARTON of Texas. When they are doing this site preparation, they prepare the pits, they have State and Federal regulations they have to comply with in terms of the drilling muds and the fluids that go down in the well and come up with the well; is that correct?

Mr. STENHOLM. And they have to dig a pit that will hold that which they are going to use on that particular site.

Mr. BARTON of Texas. So if there is anything that is going to be contaminated, they are preparing for those types of fluids?

Mr. STENHOLM. Under current law, that is correct.

Mr. BARTON of Texas. But they are not actually using any of those fluids in the site preparation? They are not doing a test run where they put those kinds of fluids in?

Mr. STENHOLM. Not until they drill.

Mr. BARTON of Texas. If we were to agree to the Filner motion to pull something out of the pending energy bill that has already passed the House so EPA could regulate the site preparation for storm water, rain water runoff, then, obviously, additional site preparation would be required, additional berms, plastic fences, and those types of things; is that correct?

Mr. STENHOLM. That is most certainly the fear, and it is not just a fear, it is a reality if we impose these regulations all across the United States, as someone might in a certain area in which we have a different rainfall characteristic.

The annual rainfall in my district ranges from 14 inches in the west to 35 inches in the eastern part of my district, the part that adjoins the district of the gentleman from Texas (Mr. BARTON). Therefore, there are different components. But the law gets interpreted and put into place and enforced in ways that assume that a drilling rig in west Texas is going to suddenly be faced with a 20-inch rain.

Mr. BARTON of Texas. Mr. Speaker, I appreciate the gentleman for engaging in this dialogue, and it is obviously not prepared. Let me continue to yield and ask a final question.

Does the gentleman know anybody in west Texas, in his district, that thinks that dirt that gets wet is a pollutant? Wet dirt caused by rain raining on the

drilling site, is there anybody in west Texas that thinks that is a pollutant, wet dirt because of rain?

Mr. STENHOLM. In the case of a flood, wet dirt that goes into a home is a pollutant.

Mr. BARTON of Texas. When was the last flood in Abilene?

Mr. STENHOLM. Two years ago, but I take the gentleman's point.

Ironically, we are facing the same question in some regions of this country where dirt is considered a pollutant, and we are attempting to regulate plows. I remember 3 years ago, I believe, in Arizona, we were attempting to regulate dust storms. That is difficult to do, the same way the gentleman is talking about regulating when is it going to rain and how much is it going to rain. From the standpoint of a normal operation in my district, again, on my own farm, the site is prepared. It would be unconscionable to require a permit, going over 6–8 months, or order to find an opportunity there based on storm water. It is done based on other conditions, and that is already current law.

Mr. BARTON of Texas. Mr. Speaker, I agree with the gentleman. We have shown in this debate that there is bipartisan opposition to the Filner motion. It is not because we do not like the gentleman from California (Mr. FILNER). He is a great guy. It is not because he is from California, the Golden State, it is simply because his motion, to those of us who oppose it, just defies common sense.

The law is clear if we have an active drilling site, it is explicitly exempt in the statute from regulation for waste water runoff. There is no reason in the world to take the plain language of an active drilling site and say you should have to regulate, at the Federal level, the site preparation for rain water runoff. That is why we clarified and added this simple section that says what they say for the site itself when it is active should also be applicable to site preparation. I ask for a no vote on the Filner motion to instruct.

Mr. Speaker, I yield back the balance of my time.

Mr. FILNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would say that the gentleman from Abilene, Texas (Mr. STENHOLM) did such a good job for the gentleman from Texas (Mr. BARTON) that they should have treated him better in the Texas redistricting law.

We have been told we ought to cry for some of these gas and oil producers and developers, and that these poor folks, we have to let them produce. I am told that the permit that would be needed for such a situation only takes 7 days. That is the law. I do not know what Members are talking about—6 months, or we will never be allowed to prepare the site. It is 7 days for the permit.

In an arid area such as the gentleman's, the law specifically waives the requirement for a permit. If there is no corrosive rain, there is no permit required. I would be tempted to say the gentleman is throwing red herrings across the debate, but with the gentleman's policies, the red herrings might all be killed so I will not.

Let me get to dirt.

Mr. STENHOLM. Mr. Speaker, will the gentleman yield?

Mr. FILNER. I yield to the gentleman from Texas.

Mr. STENHOLM. Mr. Speaker, let me say the concern I have, when the regulations are read and the experiences we have had, we have had some extremely damaging experiences with the Endangered Species Act. What the gentleman says—7-day permit, that is correct; but someone comes in and sues at the exact moment, and then we get into the litigation and all of the questions based on it.

Mr. FILNER. Mr. Speaker, I understand the gentleman's concerns. In California we have the same ones. Litigation is not the route that we wouldfavor. We would like a commonsense, as the gentleman from Texas kept saying, a commonsense law.

But dirt, siltation, is in fact the second leading polluting problem in our Nation's rivers and streams. It suffocates fish and eggs and bottom-dwelling organisms. It alters aquatic habitat, and interferes with drinking water and the recreational process of the river. So siltation is a real problem.

In conclusion, our country needs energy. We support its development, but clean water is as important as energy. It is vital for our economy and for our life itself. And the lands where the wells are drilled are the same lands that provide water for our ranchers and our city dwellers, as well as our fish and wildlife population.

The oil and gas industry say, and I have seen TV advertisements and full-page ads in magazines, that we can develop energy and protect the environment at the same time, and we agree with them. So why should Congress weaken environmental protection by writing a special exemption for one industry alone? I ask for approval of the motion to instruct.

Mr. OBERSTAR. Mr. Speaker, I rise in strong support of the motion, and I commend the gentleman from California, Mr. FILNER, for offering this motion to prevent an egregious assault on the Clean Water Act, Section 12403 of H.R. 6, the Energy Policy Act of 2003, amends the Clean Water Act to provide a permanent exemption from stormwater permitting requirements for construction activities associated with oil and gas exploration and production operations.

If this provision remains in the energy conference report, oil and gas exploration would be the only construction activity not subject to Clean Water Act requirements. Oil and gas operations would be under no obligation to control stormwater runoff that would impair our Nation's lakes, rivers, and streams. It is a complete, unprecedented end-run around one of our Nation's most successful environmental laws and should be stricken from the conference report.

Since its enactment 31 years ago, the Clean Water Act has prevented billions of pounds of pollution from fouling our Nation's waters, and we have doubled the number of healthy rivers, lakes, and streams across America. Instead of celebrating these considerable accomplishments, this Congress, following the direction of the Bush Administration, seeks to abandon them. This provision allowing the oil and gas industry a permanent exemption from complying with Clean Water Act requirements is the latest step down that road.

If left unchecked, stormwater carries pollutants from construction sites to nearby waterways, endangering human health, harming wildlife, and rendering these waterways unsuitable for recreational uses such as swimming or fishing. We cannot allow the oil and gas industry to operate without regard to the amount of pollution running into our Nation's waterways from its construction activities, thereby reversing decades of effort at reducing polluted stormwater.

Since 1990, construction sites, including oil and gas construction sites, larger than five acres have been required to control stormwater pollution. In December 1999, the Environmental Protection Agency (EPA) published a rule, to be effective in March of this year, that requires smaller construction sites, those between one and five acres in size, to control stormwater runoff. However, in response to heavy oil and gas industry pressure, EPA granted the industry a special two-year exemption from this rule. EPA decided that it needed two more years to study the impacts of enforcing this rule on the oil and gas industry, while ignoring the impacts of industry pollution on water quality.

This two-year delay is nothing more than a special favor to the oil and gas industry—remember it has been nearly four years since EPA first published the rule. The provision currently at issue takes the favoritism to the extreme by providing the oil and gas industry a permanent exemption from controlling stormwater runoff—regardless of the size of the construction site.

The oil and gas industry exemption is not only wrong on substance, but it is also wrong on process. Since consideration of this bill began early last spring, the Republican majority has blocked repeated attempts by Democrats to be heard on this provision. During the Energy and Commerce Committee's consideration of the House Energy Bill Committee Print in April, Congressman MARKEY offered an amendment to strike the offending provision. Chairman TAUZIN ruled the Markey amendment out of order, stating that it was non-germane because the issue was not within the jurisdiction of the Energy and Commerce Committee and was ''within the jurisdiction completely'' of the Transportation and Infrastructure Committee. Despite my serious concern with this Clean Water Act exemption, the Transportation and Infrastructure Committee never considered the bill.

When the House considered the bill, Congressmen COSTELLO, MARKEY, and I sought to offer an amendment to H.R. 6 to strike the provision. But the Rules Committee blocked our efforts to offer that amendment on the House Floor. As a result, today, seven months since the Energy and Commerce Committee considered the bill, is the first time Democrats have the opportunity to debate and vote on this Clean Water Act exemption for the oil and gas industry.

This provision exempting oil and gas companies from complying with the stormwater permitting requirements rolls back the clock on environmental protections and seriously jeopardizes the health of our Nations lakes, rivers, and streams.

I urge members to adopt this motion and instruct the Energy bill conferees to reject this provision.

Mr. FILNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HAYES). Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from California (Mr. FILNER).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. FILNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

## MOTION TO INSTRUCT CONFEREES ON H.R. 1, MEDICARE PRESCRIPTION DRUG AND MODERNIZATION ACT OF 2003.

Mr. CARDOZA. Mr. Speaker, I offer a motion to instruct.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. CARDOZA of California moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 1 be instructed as follows:

(1) To reject the provisions of subtitle C of title II of the House bill.

(2) To reject the provisions of section 231 of the Senate amendment.

(3) Within the scope of conference, to increase payments under the medicaid program for inpatient hospital services furnished by disproportionate share hospitals by an amount equal to the amount of savings attributable to the rejection of the aforementioned provisions.

(4) To insist upon section 1001 of the House bill and section 602 of the Senate bill.

Mr. CARDOZA (during the reading). Mr. Speaker, I ask unanimous consent that the motion to instruct be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Pursuant to clause 7 of rule XXII, the gentleman from California (Mr. CARDOZA) and the gentleman from Texas (Mr. BRADY) each will control 30 minutes.

The Chair recognizes the gentleman from California (Mr. CARDOZA).

Mr. CARDOZA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the motion we are debating tonight instructs the Medicare conference committee to reject the controversial plan of premium support and reallocate the money saved to increase payments to disproportionate share hospitals.

As a representative of an area with multiple DHS hospitals, I feel it is vitally important to provide them with the maximum Federal funding possible. However, let me first discuss the issue of premium support, and why I am concerned that this plan could potentially dismantle Medicare.

Under premium support, in the year 2010, private insurance companies and traditional fee-for-service would compete against each other to provide services to beneficiaries. Monthly premiums would be set according to an average and beneficiaries would then be given something similar to a voucher for which they could purchase coverage.

However, premium support will create a system where seniors' benefits can vary widely from county to county, State to State, and their choice in doctors can be restricted, vital services may not be covered, and their monthly premium can radically fluctuate. That is if the private plans even participate at all.

We need to look no further than the administration to find proof that this is an impending problem. A recent report by the Department of Health and Human Services actuary showed radical disparities in the monthly premiums by region. For example in Davidson County, North Carolina, Medicare beneficiaries would only pay $53 a month under premium support. However, my constituents in Stanislaus County would be forced to pay a whopping $117 per month, so more than double.

I am very concerned about subjecting a trusted health care system like Medicare to the uncertainty of the private market. I am especially hesitant about a system that relies on HMOs and other private insurance plans to administer services to our seniors. In my hometown of Merced County, there is not one, not one Medicare+Choice plan that my constituents can participate in, not one. However, for someone residing in Los Angeles County, 200–250 miles down the road, they have a pick of 11 different plans. HMOs have made it abundantly clear that serving rural America is not profitable, and, therefore, they have pulled out of those regions in a mass exodus. Now, the House bill relies on these plans to provide services for Medicare beneficiaries.

Mr. Speaker, to me it just does not make sense. So let us not take a gamble with our seniors. Instead, let us spend our resources on something far more tangible, disproportionate share hospitals. These are America's safety net hospitals caring for the sickest and poorest of our citizens, and they must not be abandoned in their time of need. Currently, there are over 40 million Americans without health insurance, and the number continues to rise. DHS hospitals accept every patient, regardless of their financial status, and provide the best possible care available day in and day out.

In my district, my hospitals fall between the cracks of not quite big enough to be considered urban, and just a little too large to be considered rural; but we have one of the largest uninsured populations in the country and increasing DHS funds are absolutely essential for their survival. Mercy Hospital in Merced County is facing severe financial shortages because of a lack of payments in this area and because of a high indigent population.

□ 1845

My motion not only directs the conferees to use funds saved by premium support for DSH hospitals but it also insists that the final legislation retain the most generous DSH provisions from the House and Senate versions of the Medicare legislation.

As we all know, DSH hospitals are facing the possibility of falling off a proverbial cliff due to the drastic reduction in Federal funding as directed by the Balanced Budget Act of 1997. Section 1001 of this bill increases DSH allotments in fiscal year 2004 to that of 120 percent of fiscal year 2003. Section 602 of the Senate bill increases the floor for low DSH States from 1 percent to 3 percent of total Medicaid spending. This provision is extremely important for States of Alaska, Arkansas, Delaware, Idaho, Iowa, Kansas, Maryland, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Wisconsin, and Wyoming who are bound by law not to spend more than 1 percent of their Medicaid dollars on DSH hospitals. Hospitals in these States are suffering as well, and we cannot let them fail, either.

Mr. Speaker, I urge every Member of this body to support my motion to instruct the Medicare conferees. America's seniors deserve a guaranteed Medicare benefit and America's safety net hospitals deserve our assistance.

Mr. Speaker, I reserve the balance of my time.

Mr. BRADY of Texas. Mr. Speaker, I yield myself such time as I may consume.

Medicare recently celebrated its 37th birthday. Medicine has changed a lot since 1965. Unfortunately, Medicare has not. Back then our seniors spent half their medical dollars for doctors, the rest for hospitals. It was pretty simple. But today, a remarkable 40 percent of seniors' costs are for prescription medicine. Through the miracle of modern science, through lifesaving drugs, technologies and new treatments, our parents and grandparents are living longer and healthier lives than any American generation. Best of all, due to new medicines, they are spending less of their golden years in hospitals and nursing homes and more of their time with their children and grandchildren.

Medicare needs to change with the times. Our seniors deserve a Medicare